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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/516,796	08/12/2005	Mark Stefan Besselink	3985-045798	7326
28289 7590 03/18/2009 THE WEBB LAW FIRM, P.C. 700 KOPPERS BUILDING 436 SEVENTH AVENUE PITTSBURGH, PA 15219				
EXAMINER JACKSON, BRANDON LEE				
ART UNIT		PAPER NUMBER		
3772				
MAIL DATE		DELIVERY MODE		
03/18/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/516,796

Applicant(s)

BESSELINK ET AL.

Examiner

BRANDON JACKSON

Art Unit

3772

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 February 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9-13, 15 and 16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9-13 AND 15-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SI/08)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

This Office Action is in response to amendments/arguments filed 1/5/2009. Currently, claims 9-13 and 15-16 are pending in the instant application.

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1/5/2009 has been entered.

Response to Arguments

Applicant's arguments filed 1/5/2008 have been fully considered but they are not persuasive. Applicant argues that Diefenbacher does not teach or suggest unrestrained motion by one of the hinges within a chosen range of motion. However, Diefenbacher teaches free, unrestrained motion of in the extension flexion direction of the hinge (1). The hinge (1) is unrestrained because it allows free motion of the hinge and it is only limited by stops that control the limits of the range of motion (7). The Examiner would like to apologize for agreeing that this amendment would overcome the last rejection of record. The Examiner was under the impression that the amendment would be related to distinguishing the present application from the restrained abduction hinge.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 9-12 and 15-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Diefenbacher et al. (US Patent 6,027,466) in view of Jagodzinski (US Patent Application Publication 2002/0133108). Diefenbacher discloses an orthopedic device (22) comprising two substantially rigid parts (4, 5) coupled to each other by hinge means (1). The rigid parts (4, 5) comprise fastening means (2, 3) for temporary fastening a limb part (fig. 1). The hinge means (1) comprises two hinges and each hinge has a pivot axis (9, 33) and pivots freely about the axis (9, 33). The pivot axes extend in directions which make an angle with each other of $90 \pm 40^\circ$, and are placed at a distance from one another to correspond with the pivoting characteristics of the relative joint. The two rigid parts (4, 5) are on one side of the hinge means (1). The

device (22) further comprises a bounding means (figs 3-4) for limiting a chosen range of motion (7, 10) of the pivoting movements of the hinges. Both hinges are obviously provided with a stop means that prevents the hinges from rotating out of the chosen angular ranges (7, 10). The fastening means (2, 3) comprises two divisible rings (2, 3) for wrapping about the user's limbs, which obviously are adjustable to fit about the user's limb. Diefenbacher fails to disclose a bounding means that is flexible and tensively strong. Jagodzinski teaches a knee orthotic device (1) comprising a bounding means (7) comprising a cable (8) that is flexible and tensively strong to restrict the movement of the knee. Therefore, it would be obvious to one of ordinary skill in the art at the time of the invention to modify the Johnson device with the bounding means, as taught by Jagodzinski, in order to provide the joint with more stability and prevent sudden abutment of the joint, which could be painful to the user.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Diefenbacher/Jagodzinski as applied to claim 9 above, and further in view of Johnson et al. (US Patent 6,203,511). Diefenbacher/Jagodzinski fail to disclose the device is a knee orthosis. However, Johnson et al. teaches a knee orthotic (104) comprising dual perpendicular hinges (10) on the knee orthotic. Therefore, it would be obvious to one of ordinary skill in the art at the time of the invention to modify the Diefenbacher/Jagodzinski device to be used on a knee orthotic, where that fastening means (2, 3) are sized fit above and below the knee, as taught by Johnson, in order to rehabilitate a knee joint.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRANDON JACKSON whose telephone number is (571)272-3414. The examiner can normally be reached on Monday - Friday 8-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on (571)272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Brandon Jackson/
Examiner, Art Unit 3772

BLJ

/Patricia Bianco/

Supervisory Patent Examiner, Art Unit 3772

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